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March 6, 2014

VIA ECF AND EMAIL

The Honorable Katherine Polk Failla
United States District Judge
United States District Court for the
Southern District of New York
40 Foley Square, Room 2103
New York, New York 10007

**Re: Starr Indemnity & Liability Company et al. v. United States
Case No. 13 Civ. 8241 (KPF)**

Dear Judge Failla:

Pursuant to the Court's Notice of Initial Pretrial Conference filed on December 23, 2013, and the Order contained therein, the parties jointly submit this letter providing the following information:

(1) Nature of Action/Principal Defenses/Major Legal and Factual Issues

This action is brought by Plaintiff Starr Indemnity & Liability Company and Plaintiff Allianz Global Risks US Insurance Company and seeks recovery of amounts paid to their insured, Evergreen Helicopter, Inc. ("Evergreen"), for the damage sustained by an Evergreen helicopter that was situated on board the USNS Alan Shepard in support of the U.S. Navy and Military Sealift Command (MSC) vertical replenishment, while the ship was at sea in the Selat Lombok Straits in the South Pacific on November 21, 2011. The helicopter sustained damage when the ship's Aqueous Film Forming Foam fire suppression system was inadvertently activated by MSC crew members. Plaintiffs contend that, as a result of the damage, the helicopter was destroyed and declared a total loss.

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The United States has denied liability, and has raised the following affirmative defenses: (1) Plaintiffs and Plaintiffs' subrogor, Evergreen, failed to mitigate their damages, including by failing to prevent further damage to the helicopter, by failing to repair the helicopter, and by failing to realize adequate scrap value; and (2) the discretionary function exception to the United States' waiver of sovereign immunity in the Suits in Admiralty Act and the Public Vessels Act deprives the Court of jurisdiction over the claims challenging certain discretionary actions by the United States, including various decisions regarding the training or supervision of the allegedly negligent crewmember aboard the USNS Alan Shepard. The parties are in the process of exchanging information regarding damages in an effort to resolve the case.

(2) Jurisdiction and Venue

Plaintiffs allege that jurisdiction arises under this Court's admiralty and maritime jurisdiction, 28 U.S.C. § 1333, as the actions complained of occurred on navigable waters and bear a significant relationship to traditional maritime activity. Plaintiffs further allege that this Court has jurisdiction over this matter pursuant to the Public Vessels Act, 46 U.S.C. § 31101 et seq., and in the alternative, pursuant to the Suits in Admiralty Act, 46 U.S.C. § 30901 et seq.

Plaintiffs allege that venue is proper in this Court pursuant to the Public Vessels Act because, at the time suit was filed, the USNS Alan Shepard was outside the territorial waters of the United States, and the action is being brought in a district in which both Plaintiffs have an office for the transaction of business. 46 U.S.C. § 31104. Plaintiffs allege that venue is proper in this Court pursuant to the Suits in Admiralty Act because the action is being brought in a district in which Plaintiff Starr Indemnity & Liability Company has its principal place of business.

(3) Existing deadlines, due dates and/or cut-off dates

There are no existing deadlines, due dates, or cut-off dates. Subject to the Court's approval, the parties have agreed to the following schedule:

<u>Activity</u>	<u>Due Date</u>
Initial disclosures due:	14 days after initial pretrial conference
Fact discovery completed:	July 11, 2014
Expert discovery completed:	August 25, 2014
Initial Requests for Production:	Served by April 2, 2014
Local Rule 33.3(a) interrogatories:	Served by April 2, 2014
Contention interrogatories:	Served 30 days before close of discovery
Depositions of fact witnesses:	Completed by June 15, 2014
Requests to Admit:	Served by June 6, 2014
Private Mediation	After close of fact discovery

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(4) Outstanding Motions

There are no outstanding motions.

(5) Discovery

No discovery has yet taken place. However, the parties are in the process of informally exchanging information regarding the evaluation of damages, to aid in early settlement discussions.

(6) Settlement Discussions

As noted above in item 5, the parties are informally exchanging information regarding the evaluation of damages, to aid in early settlement negotiations.

(7) Other Information/Dispositive Issues

None at this time.

Respectfully submitted,

/s/ John R. Oh
John R. Oh (JO 7530)
James A. Eastwood, Admitted *Pro Hac Vice*
Attorneys for Plaintiffs

/s/ Sarah S. Keast
Sarah S. Keast, U.S. Department of Justice
Attorney for Defendant